

FIRST NOTICE OF COMMENT PERIOD

LSA Document #13-272

UNDERGROUND STORAGE TANK DELIVERY PROHIBITION

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 9](#) concerning fuel delivery prohibition, often referred to as "Red Tag". IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 9-1](#); [329 IAC 9-4.5](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-19-3-1](#); [IC 13-23-1-2](#); [IC 13-23-1-4](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

In 2005, Congress amended the Solid Waste Disposal Act to include a delivery prohibition provision in the Underground Storage Tank Compliance Act, which was a part of the Energy Policy Act. As directed in the federal act, the United States Environmental Protection Agency (U.S. EPA) published Underground Storage Tank Program Delivery Prohibition Grant Guidelines in August 2006 (EPA-510-R-06-003) to implement the provision. Indiana's existing rules for the delivery prohibition program are found at [329 IAC 9-1](#) and [329 IAC 9-4.5](#).

In 2012, a new law to fully implement a delivery prohibition program was added at [IC 13-23-1-4](#). The Indiana General Assembly also passed legislation directing IDEM to adopt rules for a delivery prohibition program to be at least as stringent as the existing federal law ([IC 13-23-1-2\(c\)\(9\)](#)). This law and [IC 13-23-1-4](#) establish the basic requirements for the program and allow the Commissioner to implement the program prior to amendment of the existing rules. To date only one red tag has been placed under [IC 13-23-1-4](#). The new statute makes portions of the current rule language obsolete.

An underground storage tank (UST) is a tank or a combination of tanks, including underground pipes connected to the tank or combination of tanks. USTs contain an accumulation of regulated substances; the volume, including the volume of the underground-connected pipes, is at least ten percent (10%) beneath the surface of the ground ([IC 13-11-2-241](#)). [IC 13-23](#) establishes the UST release detection, prevention, and correction program and [329 IAC 9](#) regulates USTs. The laws and rules require USTs to have equipment installed to prevent corrosion, detect leaks, prevent overfill, and prevent spills ([IC 13-23-1-2](#)). The delivery prohibition program allows IDEM to temporarily place a "red tag" on the underground storage tank that prevents further delivery of regulated substances into tanks that do not have the required equipment installed and/or that have serious violations of the UST laws and rules until the tanks are brought into compliance. Red-tagged underground storage tanks are prohibited from accepting further delivery or deposit of regulated substances into the tank ([IC 13-23-1-4](#)).

In this rulemaking, IDEM is proposing to make changes including deleting, adding, and replacing language in the existing rules concerning fuel delivery prohibition. These changes will make the current rules completely consistent with federal regulations and guidelines and state statutes for delivery prohibition, will protect human health, and provide clear guidelines for those who own or operate underground storage tanks. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Deleting, adding, and replacing language to the existing rules for fuel delivery prohibition.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, federal law found at 42 U.S.C. 6991k. Indiana has a federally approved UST program and can be no less stringent than the federal program. For more information, see www.epa.gov/oust/fsstates.htm.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. [IC 13-23-1-4](#) adds additional requirements to what is prescribed by 42 U.S.C. 6991k.

Alternative 2. Not doing the rulemaking.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Federal law does not impose this alternative; the federal law requires states to develop rules consistent with federal regulations and guidelines if the state program is federally approved.
- If it is a federal requirement, is it different from federal law? Not applicable.

- If it is different, describe the differences. Not applicable.

Applicable Federal Law

- 42 U.S.C. 6991a, Notification
- 42 U.S.C. 6991b, Release detection, prevention, and correction regulations
- 42 U.S.C. 6991k, Delivery Prohibition

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. The amendments will not impose any requirements on affected sources beyond what is imposed under federal law except that Indiana additionally allows the Commissioner to prohibit delivery after issuing a 30 day written notice of noncompliance if the owner fails to register a petroleum UST or pay annual registration fees ([IC 13-23-1-4](#)). This alternative will have an insignificant fiscal impact from the additional state requirements. Registration and payment of annual fees are existing requirements of the state program.

Potential Fiscal Impact of Alternative 2. No fiscal impact would be imposed; however, the opportunity to avoid the fiscal impact to owners and operators of underground storage tanks that become subject to fuel delivery regulations will not be realized. Clear rules will assist owners and operators in avoiding these costly consequences.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Lauren Aguilar, Rule Development Branch, Office of Legal Counsel at (317) 234-8559 or (800) 451-6027 (in Indiana).

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #13-272 UST Delivery Prohibition
Lauren Aguilar
Rule Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
Mail Code 65-46
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rule Development Branch at (317) 233-8903.

(3) By electronic mail to laguilar@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the email address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than July 26, 2013. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Lauren Aguilar, Rule Development Branch, Office of Legal Counsel (317) 234-8559 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rule Development Branch
Office of Legal Counsel

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An [html](#) version of this document.